

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2269 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KISHANBHAI MANJIBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner

MR UR BHATT AGP for Respondents no.1,3,4 and 5

MR SUNIL C PATEL for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 12/07/96

ORAL JUDGEMENT

The petitioner Kishan Nanji Thakkar has challenged the legality and validity of the order of detention dated 20.1.1996 passed under section 3(1) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the 'Act') by the Principal Secretary to the

Government, Home Department (hereinafter referred to as the 'detaining authority').

After considering the material placed, the detaining authority has come to the conclusion that the detenu is involved in illicit traffic in narcotic drugs and, therefore, with a view to preventing the detenu from engaging in illicit traffic in narcotic drugs, the order of detention is passed.

Since this petition is required to be allowed on the first contention advanced by Mr. Soni on behalf of the detenu, it is neither necessary for me to refer to the allegations made in the grounds of detention and the other contentions raised in the petition. Mr. Soni submitted that the detenu has made a representation to all the authorities namely; the State Government as well as the Central Government. However, there is inordinate delay in considering the representation by the Central Government. It appears that the State Government has received the representation on 16.3.1996 and the same was considered and rejected on 22.3.1996. Similarly, the detaining authority also received the representation which was rejected on 19.3.1996. In view of this, as far as the State Officials are concerned, there does not appear any delay in considering the representation. However, as far as the Central Government is concerned, an affidavit has been filed by Mr. A.K. Srivastava, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, wherein he has stated that the representation dated 15th March, 1996 was received by him on 20th March, 1996, and thereafter i.e. on 21st March, 1996, comments from the Government of Gujarat is called for. Now this affidavit has been filed on 17th April, 1996, meaning thereby since 17th April, 1996 the comments were not sent by the State Government. As nothing is stated in the affidavit filed by Mr. Srivastava. After perusing the file of the Government, it appears that the State Government sent the comments on 10th April, 1996. Mr. S.C. Patel learned counsel appearing for the Central Government states that the comments have been received by the Central Government on 17th March, 1996 and ultimately, the Central Government on 23.5.1996 rejected the representation. Thus, there is inordinate delay in considering the representation by the Central Government. The State Government even though there was no reason to State Government to send the comments late i.e. on 10th April, 1996 especially when they have received the letter from the Central Government calling for the comments. Similarly, the Central Government even though after receiving the comments on

17th April, 1996 could not have taken long time i.e. up to 23.5.1996 in deciding the representation. No material whatsoever has been produced before me wherein such a delay is explained by the Central Government. Under the circumstances, the petition is required to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 20.1.1996 is quashed and set aside. The detenu Kishan Nanji Thakkar is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.
